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**State and County Expenditures for Indigent Defense Services
in Fiscal Year 2005**

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Introduction

The Sixth Amendment to the United States Constitution guarantees to all persons accused of crime the right to counsel in their defense. The United States Supreme Court has clarified that the Sixth Amendment requires the government to make counsel available for persons accused of crime who cannot afford to hire an attorney. The right to appointed counsel applies to the federal government under the Sixth Amendment and to the states under the due process clause of the Fourteenth Amendment. States have responded to the Court's mandate by developing a variety of systems through which indigent defense services are provided.

In 1932, the Supreme Court first confirmed the federal right to appointed counsel for indigent defendants in state court to defendants facing a sentence of death.¹ Since the 1960s, the Supreme Court has expanded the list of cases in which counsel must be appointed for indigent individuals.² This includes, among other things, felonies, misdemeanors and direct appeals for adults and in cases in which juveniles are tried as delinquents. It also includes some non-criminal proceedings, such as when a parent is facing termination of parental rights. In many states, the right to counsel has been expanded by state statute or state supreme court decisions to include cases not addressed by the Supreme Court, such as capital post-conviction cases or child support cases.

To carry out these federal and state mandates to offer counsel for indigent individuals, some states and localities have created public defender programs, while others use private attorneys who are appointed on a case-by-case basis or who work under contract accepting appointments. Most use a combination of these methods. Just as delivery systems vary, the systems for funding indigent defense services vary. In some states, all funding is provided by the state while in others funding is a shared responsibility among the state, counties and municipalities. There are only two states that leave the entire responsibility for funding indigent defense up to the counties: Pennsylvania and Utah.

¹*Powell v. Alabama*, 287 U.S. 45 (1932).

² The first case extending the right to counsel to indigent defendants was *Gideon v. Wainwright* 372 U.S. 335 (1963), which specified that defendants who have been charged with a serious crime and are unable to hire counsel are entitled to the appointment of counsel at the state's expense. Later opinions extended the right to additional cases and critical proceedings: *Douglas v. California*, 372 U.S. 353 (1963) (direct appeals in states that provide that process); *Miranda v. Arizona*, 384 U.S. 436 (1967) (custodial interrogation); *In re Gault*, 387 U.S. 1 (1967) (juvenile proceedings resulting in possible confinement); *U.S. v. Wade*, 388 U.S. 218 (1967) and *Gilbert v. California*, 388 U.S. 263 (1967) (post-indictment lineups); *Coleman v. Alabama*, 399 U.S. 483 (1969) (critical stages of preliminary hearings); *Johnson v. Avery*, 393 U.S. 483 (1969) (collateral attack (in limited circumstances)); *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (any crime, including misdemeanor and petty offense cases, that actually leads to imprisonment); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (certain probation and parole revocation hearings); *M.L.B. v. S.L.J.* 519 U.S. 102 (1996) (defense against the State's termination of parental status); *Alabama v. Shelton*, 122 U.S. 1764 (2002) (any crime, including a minor misdemeanor, where defendant receives a suspended or probated sentence to imprisonment). There is no federal constitutional right to counsel in state post conviction proceedings.

As indigent defense systems have matured and evolved since the 1960s, costs have increased significantly. Comprehensive, state-by-state information on indigent defense expenditure and system type was last collected in 1986. At that time, it was estimated that just under \$1 billion, or \$991,047,250, was spent on indigent defense services in the states.³ Access to comparative indigent defense expenditure information is of critical importance to policy-makers and others when assessing the adequacy of funding or when considering changes to an indigent defense program. The Spangenberg Group, acting on behalf of the American Bar Association Bar Information Program, has now compiled the most comprehensive expenditure information on indigent defense since 1986. The accompanying table shows that in FY 2005, combined county, state and federal government spending on indigent defense totaled an estimated \$4.1 billion, up from \$3.3 billion in FY 2002.⁴ Federal government expenditure was well over half a billion dollars (\$668,800,000).

The Spangenberg Group is a research-based consulting organization that specializes in improving indigent defense programs. Since 1986, The Spangenberg Group (TSG) has been under contract with the American Bar Association's Bar Information Program (BIP), which provides support and technical assistance to individuals and organizations working to improve their jurisdictions' indigent defense systems.

Collection of the data in the accompanying table was accomplished by contacting public defenders, court administrators, administrators of assigned counsel programs, legislative analysts, and representatives of non-profit agencies, county associations, and public defender associations. In some states, it is very difficult to get accurate statewide expenditure information because indigent defense is funded and provided on a county level, and no statewide effort is made to collect information from the localities. Because of this, estimates of indigent defense expenditure have been provided for several states. The table does not include indigent defense expenditure data from municipalities. All misdemeanors in New Jersey are handled at the municipal level, thus costs of misdemeanor representation are not included for that state.

Another factor that complicates collection and comparison of indigent defense expenditure data is that the types of cases included under the umbrella of indigent defense differ from state-to-state. The indigent defense system in Oregon, for example, includes termination of parental rights, dependency (adults and juveniles), civil commitment, Psychiatric Security Review Board, child support contempt, felony, misdemeanor, juvenile delinquency, appeals, and habeas corpus cases. In Colorado, on the other hand, the expenditure figure in the accompanying table covers representation in adult and juvenile criminal cases and appeals only; the costs for counsel in various civil cases where the right to counsel applies are not part of the state's indigent defense expenditure.

³ R. Spangenberg, The Spangenberg Group, *Criminal Defense for the Poor*, 1986, U.S. Department of Justice Bureau of Justice Statistics Bulletin (1988).

⁴ A number of states with state-funded public defender systems, such as Arkansas, Georgia, Hawaii, North Carolina, and Wyoming, require counties to provide office space for public defender offices. The expenditure figures in the accompanying table do not include this type of in-kind cost.

There are a number of reasons why the amounts spent by states on indigent defense vary a good deal. For instance:

- States with the death penalty that have hundreds of individuals on death row, such as California, Florida and Texas, can see significantly higher indigent defense costs.
- In some states, such as California, public defenders are paid much higher salaries than in other states, such as Virginia.
- The law in some states prohibits representation of co-defendants in all circumstances. Other states permit joint representation in preliminary matters or until an actual conflict is discovered.
- Some states, such as New York, require by statute that counsel be appointed in minor misdemeanors, including traffic offenses, as these are treated asailable offenses. Other states punish such offenses with fines only, thereby eliminating the requirement of counsel.

To help put these differences in context, the following section briefly describes the indigent defense systems used in the 50 states, as well as the District of Columbia, and indicates any recent and significant changes to the systems. Some of the descriptions are more detailed than others. The longer descriptions tend to be in states where indigent defense services are undergoing changes and/or are not provided in a centralized, statewide fashion, or where the funding system involves more lengthy explanation. Information describing each state's indigent defense system was gathered in the summer of 2006.

More than half of the states have some sort of statewide commission that oversees the provision of indigent defense services. Typical duties of such commissions include creation of indigent defense standards and guidelines and selection of program administrators or chief public defenders. Information on these programs is available in a BIP document, *Statewide Indigent Defense Systems, 2006*. A list of websites for indigent defense commissions appears at the end of this document. Information on what court-appointed counsel are paid throughout the country in capital and non-capital felony cases is available in two other BIP documents: *Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview* (August 2003, with select updates through June 2006) and *Rates of Compensation for Court-Appointed Counsel in Capital Cases at Trial: A State-By-State Overview, 2003*. All three BIP documents are available on the ABA SCLaid website: www.abanet.org/legalservices/sclaid/defender.html.

Indigent Defense Delivery Systems in the United States

Alabama

2005 Pop: 4,557,808

No. of Counties: 67

The provision of indigent defense services in Alabama varies from county to county. While three of the state's 67 counties operate public defender offices, only one of these operates full-time, the rest rely upon either appointed counsel or contract attorneys. Funding for indigent defense in Alabama comes from the Fair Trial Tax Fund, which is comprised of fees which are added to the filing fee in civil cases, and costs in criminal cases. The Fair Trial Tax Fund is designed to reimburse counties for all indigent representation. If revenues from the Fair Trial Tax Fund are insufficient to cover the counties' costs, the state provides funds to cover the deficit. In recent years, this deficit has grown, and the state has been required to contribute greater amounts to cover indigent defense funding shortfalls.

Assigned counsel compensation increased significantly in the 1990s. In 1975, the Alabama state legislature established the rate of compensation for court-appointed counsel at \$20 per hour for out-of-court work and \$40 per hour for in-court work. The legislature approved an hourly rate increase in 1999, and again in 2000 to the current rate of \$40 per hour out-of-court and \$60 per hour in-court.⁵

In addition to compensation for professional services rendered, from 1993 to February 2005, Alabama courts were required to pay appointed counsel a presumptive hourly rate of \$30 for overhead for each hour billed as the result of a lawsuit. *May v. State*, 672 So.2d 1307 (Ala. Ct. of Crim. Appeals, 1993), determined that the words "reasonable expenses" in the statute could be interpreted as average hourly overhead. The combined actions of the *May* order and the Alabama legislature's increase to attorney fees effectively raised the hourly rates to \$70 per hour for out-of-court work and \$90 per hour for in-court work. These changes produced a dramatic impact on expenditures for indigent defense in Alabama, and the total expenditure for indigent defense rose from \$17 million in FY 1998 to over \$37 million in FY 2002, of which \$22 million was paid by the state. However, in February 2005, the Attorney General of Alabama issued an opinion conflicting with the *May* decision and the State Comptroller was advised to no longer pay the \$30 overhead fee. A challenge was brought in court, and a lower court ruling reinstating the fee has been stayed pending an appeal to the Alabama Supreme Court.

Alaska

2005 Pop.: 663,661

No. of Divisions: 27

All indigent defense representation in Alaska is state funded, and there are two primary providers of services: the Alaska Public Defender Agency, and, for conflict, domestic violence, termination of parental right and juvenile dependency cases, the Office of Public Advocacy.

⁵ Maximum rates in non-capital cases are now \$3,500 for a Class A Felony, \$2,500 for a Class B Felony, \$1,500 for a Class C Felony, \$2000 for a juvenile delinquency case and \$1,000 for all other cases. The caps are waiveable upon showing of good cause.

Regional offices are located throughout the state. The Office of Public Advocacy contracts with private attorneys for some cases.

Arizona

2005 Pop.: 5,939,292

No. of Counties: 15

By statute, each county in Arizona selects its system for delivery of indigent defense services, and the state has a mix of county public defenders, contract attorneys and assigned counsel. Six counties (Cochise, Coconino, Mohave, Navajo, Pima and Yuma) have both primary and secondary public defender offices. In addition to its two defender offices, Pima County has a contract program that accounts for half of the county's expenditure on indigent defense. Maricopa County (Phoenix) has primary, secondary and tertiary public defender programs, with contract counsel handling any other overflow or conflict cases. La Paz, Pinal and Yavapai counties have a single public defender office. The remaining five counties rely solely on contract counsel.

Over 99 percent of all funding for indigent defense representation in Arizona is provided by the counties. In 1999 the Arizona Legislature created three main funding sources to help counties fill gaps in funding for certain components of the justice system, including indigent defense, which arose when the state increased funding for police departments and corrections. The funding sources are:

- A penalty assessment of 47 percent levied on all fines, penalties, and forfeitures imposed by the courts for both criminal and civil cases, including traffic violations, as well as an additional seven percent fine on specified cases. An additional surcharge of five percent on filing fees is also mandated by this law. A percentage of this money is allocated to the 21.61 State Aid to County Attorneys Fund (21.61%); the State Aid to Indigent Defense Fund (20.53%); and the State Aid to the Courts Fund (57.37%).
- A seven percent additional assessment to fines and other court fees. 14.66 percent of the money collected from this assessment is distributed to the State Aid to Indigent Defense Fund.
- A general fund appropriation.

In fiscal year 2005, the general fund appropriation distributed among all counties, except Pima and Maricopa Counties, totaled \$150,100. An additional \$670,800 collected from fine revenue was distributed to all 15 counties.

The general fund appropriation and the surcharge earmarked for the courts are administered by the AOC. The five percent set-aside of funds collected by the courts is kept and administered locally for county court use. Funds earmarked for the public defender/indigent defense counsel and county attorney are distributed through the Arizona Criminal Justice Commission (ACJC). It should be noted that counties with populations exceeding 500,000 (Maricopa and Pima) were not

eligible for general fund appropriations in FY 2005, yet during FY 2005, handled 76% of all criminal cases in the state.⁶

There is also a \$25.00 assessment fee for indigent defendants seeking representation. Judges have the option of whether to order the fee; however, inability to pay the up-front fee cannot result in denial of counsel for indigent defendants. Revenue collected is diverted to the county's general fund in an account used solely by the public defender and assigned counsel programs, to defray local costs of indigent defense.

Arkansas

2005 Pop.: 2,779,154

No. of Counties: 75

Under legislation passed by the Arkansas General Assembly in the 1997 session, effective January 1, 1998, the state assumed the major responsibility for funding indigent defense in Arkansas, and the Arkansas Public Defender Commission, for the first time, was given input into the selection of local public defenders. Funding responsibility for the state's trial court system, which includes trial-level indigent defense services, was transferred from county government to the state. The Arkansas Public Defender Commission is now responsible for the payment of the salaries of public defenders, secretaries and other support staff with public defender offices, while counties maintain their responsibility for the cost of facilities, equipment, supplies and other office expenses of public defender offices. Trial public defenders are responsible for the representation of indigent defendants in all felony, misdemeanor, juvenile, guardianship and mental health cases, as well as all traffic offenses punishable by incarceration. The Commission's Capital, Conflicts and Appellate Division provides legal services to indigent defendants in capital and appellate cases, and those in which local Public Defenders have conflicts. The Commission sets compensation rates for court-appointed counsel. There are county or regional public defender offices in each of the state's 23 judicial districts, and in some districts there is more than one office.

California

2005 Pop.: 36,132,147

No. of Counties: 58

In California, by statute, trial representation is funded on a county-by-county basis. Each county selects a primary provider of services: public defender, assigned counsel or contract defender. With the exception of San Mateo County, all of the state's larger counties have elected to establish a county public defender. For conflict cases, many counties contract for services and/or create a second public defender program.

In an effort to address some of the long-standing problems associated with finding counsel to handle direct appeals and state post-conviction proceedings in capital cases in California, the California Habeas Corpus Resource Center (HCRC) was established in 1998 to provide direct representation in state and federal habeas corpus proceedings for inmates on California's death row, as well as some training and support for private attorneys who handle these cases. The same bill that established HCRC also authorized the hiring of 15 additional

⁶ *Fill the Gap Annual Report 2005*, pg. 3, Court Services Division, Administrative Office of the Courts, Arizona Supreme Court (Dec. 2005); see also *Fill the Gap FY 2005 Report*, Arizona Criminal Justice Commission (Jan. 2006).

attorneys and support staff in the state-funded Office of State Public Defender (OSPD), which primarily provides representation on direct appeals, in addition to a small number of habeas corpus proceedings, in capital cases, although subsequent budget reductions have eliminated some of these additional positions. HCRC's office is in San Francisco; OSPD has two offices, in San Francisco and in Sacramento.

The California Appellate Project (CAP), created by the State Bar of California in 1983 as a non-profit entity to recruit, evaluate, train and assist counsel appointed by the California Supreme Court in direct appeal and state post-conviction capital cases, serves as a resource center for private counsel handling death penalty cases. In addition, five non-profit offices provide similar services in non-capital criminal, juvenile delinquency, and juvenile dependency appellate cases in the Courts of Appeal: the First District Appellate Project (FDAP, in San Francisco); CAP-LA (the Los Angeles of CAP, covering the Second District), the Central California Appellate Program (CCAP, in Sacramento, covering the Third and Fifth Appellate Districts), Appellate Defenders, Inc. (ADI, in San Diego, covering the Fourth Appellate District), and the Sixth District Appellate Project (SDAP, in San Jose). All of the appellate and post-conviction offices are funded by the state.

Colorado

2005 Pop.: 4,665,177

No. of Counties: 63

The state-funded Colorado State Public Defender provides representation in criminal and juvenile delinquency cases to indigent defendants in Colorado from its regional trial offices and central appellate office. A commission hires and fires the chief public defender. Conflict of interest cases are handled by appointed counsel who qualify for inclusion on the list of eligible attorneys maintained and administered by the state-funded Alternate Defense Counsel. A separate commission hires and fires the Alternate Defense Counsel and also provides input and advice to the program.

Connecticut

2002 Pop.: 3,510,297

No. of Counties: 8

The state-funded Connecticut Division of Public Defender Services provides virtually all indigent defense representation in Connecticut. The policy-making body and appointing authority for the Division is the Public Defender Services Commission. Its seven members are appointed for three-year terms by the Governor, the Chief Justice and the leaders of the General Assembly. Specialized units in the Office of Chief Public Defender are responsible for representation of clients in capital cases, appeals before the Connecticut Supreme Court and Appellate Court, habeas corpus proceedings, matters before the Psychiatric Security Review Board, and juvenile post-conviction matters. The office's Special Public Defender Division oversees appointment of private attorneys to handle conflict and overload cases. Private attorneys accept cases on a contract or case-by-case basis. The Public Defender has regional offices throughout the state.

Delaware**2005 Pop.: 843,524****No. of Counties: 3**

The Delaware State Public Defender represents all indigent defendants in trial and appellate cases, and has a central office and two regional offices. The state pays all expenditures for indigent defense. The majority of conflict cases are handled by a pool of private attorneys who contract with the state to handle conflict cases. A \$50 hourly rate is applied to the few cases that are not handled by contract counsel.

District of Columbia**2002 Pop.: 550,521****No. of Counties: 0**

Federal funds pay for indigent defense services provided by the Public Defender Service (PDS) program, an independent agency of the District of Columbia governed by an eleven-member Board of Trustees that provides representation in the District of Columbia Superior Court and Court of Appeals. PDS represents adults charged with felony and misdemeanor offenses and juveniles charged with serious acts of delinquency. PDS also represents individuals who have been involuntarily hospitalized for treatment of mental illness and persons who have been found incompetent to stand trial or who have been found not guilty by reason of insanity. There are five legal practice groups at PDS: the Trial Division, the Appellate Division, the Mental Health Division, the Special Litigation Division, and the Civil Legal Services Division.

Additional felony, and a large majority of misdemeanor, traffic and other criminal cases are handled by private attorneys appointed by the court under the federal Criminal Justice Act (CJA). PDS, through its CJA Office, assists the court with the administration of the CJA program by conducting financial eligibility interviews of arrestees and defendants, and facilitating the assigned counsel program.

Florida**2005 Pop.: 17,789,864****No. of Counties: 67**

There are 20 judicial circuit public defenders in Florida who are publicly elected and provide representation at trial. Appellate cases are handled on a regional basis by five of these offices. Conflict cases are handled by private court-appointed counsel.

In 1998, the State of Florida constitution was amended to require full state funding of the judicial system effective July 1, 2004. Prior to 1998, funding for Florida's judicial system was provided by the state and counties, with counties forced to fund an increasing share of the court system through local property taxes. While the state public defender system was state funded, counties were responsible for indigent defense conflict of interest and overload case costs. The 2003 special legislative session and the 2004 regular session passed substantial appropriations to comply with the constitution. Funding for the amendment to Article V comes solely from the state general revenue fund.

In fiscal year 2002, the last year for which TSG has expenditure data for Florida, Florida's counties contributed approximately 20 percent of the state's expenditures for indigent defense. In the 2004 legislative session state appropriations increased to cover the 20 percent

that had been provided by the counties, plus expenditures surpassed maintenance funding. Eighteen and a half million dollars was allocated for public defender “due process service costs,” which had been provided by the counties. Public defender due process service costs include reasonable court reporting and transcription services, costs associated with interpreters, translators, expert and investigation witnesses, mental health professionals for involuntary commitment proceedings, travel costs of witnesses including consultation fees and pretrial/trial costs. In addition, the state provided \$37.5 million for criminal conflict attorney costs, which had also been provided by the counties, \$1 million for due process contingency funds, which provides a preemptive source of funding for criminal defense conflict costs or due process costs for state attorneys if needed, and \$16.1 million for 201 additional positions for public defenders in trial and appeals. Some of these positions had been county funded due to under-funding of the public defender by the state, therefore counties were supplementing the positions.

In addition to the major shift in funding, the new legislation created circuit indigent defense services committees, funded by the state, to oversee conflict criminal attorneys in all criminal cases. Each circuit committee now establishes the rates paid to conflict attorneys subject to state appropriations. There are two preexisting state-funded offices of the Florida Capital Collateral Representative, which provide representation to indigent capital prisoners in state and federal post-conviction proceedings. Additional cases are handled by court-appointed counsel.

Georgia

2005 Pop.: 9,072,576

No. of Counties: 159

In April, 2003, the Georgia General Assembly enacted a bill to reform Georgia’s indigent defense system.⁷ Effective January 1, 2005, Georgia’s system changed to create judicial circuit-based public defender offices set up in each of the state’s 49 judicial districts, replacing a county-based system. The state-funded circuit public defenders provide representation in superior and juvenile court and in direct appeals from these courts. City and county governments may contract with the circuit public defender to provide indigent defense services in lower courts. Even if counties choose to opt out of the statewide system and maintain the public defender offices that were in place at least two years prior to July 1, 2003, public defender offices and their staff will still be subject to statewide standards for indigent defense. Public defenders were selected for 43 of Georgia’s 49 judicial circuits by panels composed of five members: one each appointed by the Governor, the Lieutenant Governor, the Speaker, the Chief Justice and the chief judge of the Superior Court. Also, as of January 1, 2005, the office of the Multi-County Public Defender, a state-funded capital trial unit, was replaced by the Office of the Georgia Capital Defender, which will have expanded duties.

There are currently 43 full-time circuit public defender offices throughout the state, with six counties opting out of the statewide program, as permitted by the legislation. In addition,

⁷ Prior to this new system, indigent defense in Georgia was funded and organized on a local level by the state’s 159 counties. The state legislature created the Georgia Indigent Defense Council, a statewide oversight body for Georgia’s county-organized and county-funded indigent defense systems, in 1979. However, it was not until 1989 that the state first appropriated \$800,000 for GIDC to distribute to counties that meet its indigent defense standards and guidelines. In FY 2002, GIDC distributed \$5,990,000 among 152 of the state’s 159 counties.

there are 15 regional conflict defender offices to handle conflict cases and overload from the public defender offices.

The bill also created the Georgia Public Defender Standards Council (GPDSC), which is composed of 11 members, two each appointed by the Governor, the Lieutenant Governor, the Speaker, the Chief Justice of the Supreme Court, and the Chief Judge of the Georgia Court of Appeals. The eleventh member is a circuit public defender, initially appointed, but subsequently elected, by the 49 Circuit Public Defenders.

The GPDSC appointed an executive director to provide support services for circuit public defenders including administrative help, education and training programs. The director also developed rules, policies and standards for public defenders, and GPDSC is responsible for monitoring and enforcing the standards and policies.

In the 2004 legislative session, a funding bill, HB 1EX, was passed effective July 2004, creating additional fees and surcharges specifically earmarked to fund the new indigent defense system. There was an increase of \$15 in the filing fee in all civil actions, a 10% surcharge on criminal fines, a 10% surcharge on bails or bonds with a \$50 cap, and a newly created \$50 waivable application fee for indigent defendants. The collection from these fees/fines was anticipated to reach \$32.1 million in FY05 and \$42.08 million in FY06. Of the fees imposed, the counties keep the revenue generated from the \$50 application fees collected by the lower courts, and all other fees are remitted to the State treasury.

The Georgia Indigent Defense Act was drafted to respond to recommendations made in December 2002 by a commission appointed by the Chief Justice of Georgia Supreme Court. The Chief Justice's Commission on Indigent Defense recommended, among other things, that indigent defense services be funded primarily by the state, and that services be provided with greater state oversight and accountability through judicial circuit public defender offices. The Commission based its recommendations on a statewide study conducted by The Spangenberg Group and released in December 2002. A subsequent study conducted for the Commission by The Spangenberg Group and completed in June 2003 reviewed the effects of implementing *Alabama v. Shelton*, 535 U.S. 654 (2002) in Georgia. The new law brings Georgia law into compliance with *Alabama v. Shelton*, in that it forbids imposition of "any punishment of confinement, probation or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement, probation or other loss of liberty" without assistance of counsel.

Hawaii

2005 Pop.: 1,275,194

No. of Counties: 4

Hawaii has a state-funded, state-wide public defender system. The Office of the Public Defender has an appellate office and a trial office in each of the four judicial circuits, including two on the island of Hawaii (the Big Island). The Defender Council serves as the governing body of the Office of the Public Defender. Council members are appointed by the Governor with at least one member appointed from each county of the State. The State Public Defender is appointed by the Defender Council. Court-appointed counsel represent defendants in conflict of interest cases, and the hourly rate of compensation for court-appointed counsel increased

significantly in 2006, from \$40 per hour for out-of court work and \$60 per hour for in-court work, to \$90 per hour across the board.

Idaho

2005 Pop.: 1,429,096

No. of Counties: 44

At the trial level, indigent defense services are funded and provided on a county-by-county basis in Idaho. Counties determine what type of system to use: public defender, assigned counsel, contract or combination. A state-funded Appellate Defender created in 1998 handles all criminal appeals in the state, as well as state post-conviction proceedings in capital cases. Additionally, counties may voluntarily contribute to, and draw from, the legislatively-created Capital Crimes Defense Fund to help fund the costs of criminal defense in cases where the death penalty may be sought. Only those counties which contribute to the Capital Crimes Defense Fund are able to use the services of the State Appellate Public Defender. The fund is organized and administered in accordance with a joint powers agreement by the participating counties.

Illinois

2005 Pop.: 12,763,371

No. of Counties: 102

The majority of Illinois' 102 counties have county-funded trial public defender offices (by statute, counties with populations of 35,000 or more are required to have a public defender); the balance use either contract defenders or assigned counsel. Many of the public defender offices operate part-time. In conflict cases, the circuit court judge appoints counsel and sets the compensation rate. For fiscal year 2007, the legislature appropriated money to reimburse counties for the salaries of public defenders. The amount appropriated is not enough to cover every county with a salaried public defender; however, money to fully fund all public defender salaries will be requested in the upcoming legislative session.

The state funds the Office of State Appellate Defender, which has five regional appellate offices throughout the state that handle direct appeals and state post-conviction cases. In 2000, the state legislature enacted the Capital Crimes Litigation Act, which established the Capital Litigation Trust Fund to provide state funds for the representation of defendants in death penalty cases. Private attorneys representing an indigent client charged with a capital offense are reimbursed at a rate that is adjusted every year according to the state's consumer price index, with no maximum. There is also a Death Penalty Trial Assistance Division that is funded through the Capital Litigation Trust Fund. In addition to the five appellate offices and the Death Penalty Trial Assistance Division, there is a Supreme Court Unit, which handles death penalty appeals, a Post-Conviction Unit, and an Expungement Program, which provides information but no representation on the expungement and sealing of criminal records. All of these offices are state funded.

Indiana

2005 Pop.: 6,271,973

No. of Counties: 92

Prior to 1989, state funding for indigent defense in Indiana supported two entities: the State Public Defender of Indiana and the Indiana Public Defender Council. The State Public Defender of Indiana is a statewide entity that represents indigent defendants in state post-conviction proceedings and in a limited number of direct appeals. The State Public

Defender is appointed by the Indiana Supreme Court and is a judicial branch agency. The Indiana Public Defender Council, governed by an 11-member Board of Directors, is a support center for attorneys who represent indigent criminal defendants. The Council provides training programs and various publications for indigent defense practitioners, including the provision of information in electronic format.

In 1989, the state established the Indiana Public Defender Commission (IPDC) to assist counties in defraying the cost of defense representation in capital cases. Based upon recommendations of the Commission, effective February 1, 1993, the Indiana Supreme Court amended Criminal Rule 24, in order to include mandatory standards for appointment, workload and qualifications of counsel in capital cases. If there is compliance with this rule, the IPDC reimburses counties 50 percent of their defense costs in capital cases.

Subsequently, the Commission was authorized to reimburse counties for 40 percent of their expenses in providing indigent defense services in non-capital felony cases and in juvenile delinquency matters. In order to receive such reimbursements, counties must adopt comprehensive plans assuring the independence of the defense function and adhere to IPDC standards for providing defense services. In both capital and non-capital cases, reimbursements approved by the IPDC cover attorneys' fees, as well as costs of experts, investigators, and other support services.

As of August 2006, 54 of the state's 92 counties had qualified for 40 percent reimbursements in non-capital cases. However, the IPDC's annual appropriation for fiscal year 2004-2005 was only \$8 million, which was insufficient to provide 40 percent reimbursements for all eligible counties. Accordingly, as required by Indiana law, county reimbursement claims in non-capital cases will be pro-rated until additional funds are appropriated by the legislature.

Iowa

2005 Pop.: 2,966,334

No. of Counties: 99

In 1989, the state of Iowa assumed the cost of providing indigent defense services, replacing the state's counties as the primary providers, although counties contribute a portion of the money that is spent on juvenile defense. The move toward state funding coincided with the creation of a state-funded, unified court system. The state public defender oversees all indigent defense payments, including those for public defender staff offices (there are 19 adult and juvenile trial-level offices throughout the state, and one civil commitment unit), attorneys working under contract with the public defender and attorneys who accept court-appointed cases. The state public defender also has an appellate office.

Kansas

2005 Pop.: 2,774,687

No. of Counties: 105

The state-funded Kansas Board of Indigents Defense Services (BIDS) is responsible for all indigent defendant felony and appeal cases, while the state's counties retain responsibility for funding and providing counsel for misdemeanor and juvenile cases. Created in 1982, BIDS maintains a central appellate office and eight regional trial offices throughout the state, including one satellite office, while misdemeanor and juvenile representation is provided by county

contract defenders and assigned counsel. The Board consists of nine persons appointed by the Governor and subject to confirmation by the Senate. In fiscal year 1995 BIDS established the Death Penalty Defense Unit in response to the re-enactment of the death penalty in Kansas. There is also a capital appeals office and a separate capital appeals and conflict office.

Kentucky

2005 Pop.: 4,173,405

No. of Counties: 120

The Kentucky Department of Public Advocacy (DPA) is an independent statewide entity that oversees the delivery of indigent defense services in Kentucky's 120 counties. By statute, the state is responsible for funding indigent defense in Kentucky. Only a few counties choose their own plan for delivery of services, in which case the county contributes local funds to augment the state appropriation. The DPA now operates public defender programs in every county, with some offices covering multiple counties. In Jefferson, Fayette, and Boyd Counties (which include the cities of Louisville and Lexington), public defender representation is provided by private, non-profit corporations outside of the DPA which receive a combination of county and state funds. A 12-member Public Advocacy Commission assists the DPA with budgetary and certain supervisory responsibilities and conducts public education about the purpose of the public advocacy system.

The DPA's Trial Division is divided into six regions managed by a regional manager. The Trial Division has a specialized Capital Trial Branch. The DPA also has a Post-Trial Division, with a Central Appeals Branch, a Post-Conviction Branch and a Juvenile Post-Dispositional Branch. The DPA also has an Education and Strategic Planning Division that oversees and presents extensive trial, post-trial, and leadership education for staff. A Law Operations Division and a Protection and Advocacy Division, funded primarily with federal money, provide advocacy services for the developmentally disabled and mentally ill.

The DPA receives approximately 15 percent of its funding from several non-general fund revenue sources. For example, the DPA receives 25 percent (\$62.50) of the \$250 service fee assessed against individuals convicted of DUI. The DPA also receives 3.5 percent of a \$100 court cost in criminal cases collected, up to an annual cap of \$1.75 million. This fee was established after the 2002 General Assembly repealed the public advocacy administrative fee, which had been largely unsuccessful in generating income for indigent defense. A third source of revenue is a partial fee, or costs charged to an indigent defendant whom a judge determines is able to afford to pay partially for the cost of representation.

Kentucky law also requires each county to appropriate 12.5 cents per-capita of the county population to a fund established to cover expert witness fees and other comparable expenses associated with providing indigent defense services.

Louisiana

2005 Pop.: 4,523,628

No. of Parishes: 64

Until 1994, all indigent defense services in Louisiana were funded and delivered at the local level. In 1994, following its landmark decision in *State v. Peart*, 612 So.2d 780 (La. 1993), and a statewide study of Louisiana's indigent defense system conducted by The Spangenberg

Group, the Louisiana Supreme Court promulgated a rule creating the Louisiana Indigent Defender Board, now called the Louisiana Indigent Defense Assistance Board (LIDAB). For its first year, the state legislature appropriated \$5 million for the statewide LIDAB to directly supplement the budgets of local indigent defender boards, defray the costs of court-ordered defense experts and tests throughout the local boards, and more adequately fund counsel representing indigent defendants charged with capital crimes.

Each parish is authorized by statute to establish assessments on all criminal violations, including traffic, misdemeanor and felony charges. These assessments comprise the primary source of indigent defense funding for parishes. The state also contributes money towards indigent defense through two separate funds: LIDAB's District Assistance Fund, available to Louisiana parishes that comply with LIDAB qualification and performance guidelines, provides monies toward trial-level representation, and the Expert Witness/Testing Fund, also through LIDAB, provides money for experts and investigators. LIDAB also maintains the list of counsel certified to accept appointments in capital cases, and has three Regional Capital Conflict Panel Offices, which handle conflict of interest cases in those indigent defender districts that have a staff office. LIDAB's Louisiana Appellate Project represents indigents in felony appeals across the state, and its sister agency, the Capital Appeals Project, handles direct capital appeals. Also, LIDAB runs the Capital Post-Conviction Project, which was created in response to statutory law mandating that LIDAB provide post-conviction representation for persons sentenced to death.

Local indigent defender boards (IDBs) are mandated by statute in each of the state's 40 judicial districts. Each parish in the district has a representative on the IDB. Nominees are submitted by local bar associations and members are generally selected by local district court judges. The IDBs oversee local indigent defense programs, which includes administering assigned counsel panels, entering contracts with contract defenders, and selecting public defenders. Each IDB is required to select an indigent defense system for the district: an assigned counsel, contract or public defender program. In districts comprising more than one parish, the board may select different delivery systems for the parishes.

Maine

2005 Pop.: 1,321,505

No. of Counties: 16

The state funds indigent defense services in Maine, which relies exclusively on an assigned counsel system to provide representation in all adult criminal and juvenile delinquency cases, abuse and neglect cases, and guardian ad litem and Children in Need of Protective Services (CHIPS) proceedings. Funds are administered through the Administrative Office of the Courts.

Maryland

2005 Pop.: 5,600,388

No. of Counties: 23

Indigent defense services in Maryland are fully state-funded. The Maryland State Public Defender is an independent agency under the executive branch and the Public Defender appoints the district defenders for each of Maryland's 12 judicial districts. A three-member Board of Trustees named by the Governor appoints the Public Defender and provides advice to the Public Defender in relevant matters. The public defender program maintains trial divisions in all

Circuit, District and Juvenile Courts throughout the state. Additionally, the Maryland State Public Defender has statewide capital defense, appellate, children in need of assistance (CINA), collateral review, and mental health divisions. Conflict of interest cases are handled by court-appointed counsel.

Massachusetts

2005 Pop.: 6,398,743

No. of Counties: 14

Massachusetts' state-funded Committee for Public Counsel Services (CPCS) is a fifteen-member body established to oversee the provision of legal representation to indigent persons in the Commonwealth.⁸ Members are appointed by the state's Supreme Judicial Court. Legal representation of indigent defendants, parents and children is provided by a hybrid system of approximately 2,400 private attorneys (called bar advocates) and a full-time, staff public counsel division with 13 regional offices and approximately 110 staff attorneys handling criminal cases. The specific types of cases to be handled by the private counsel division and the public counsel division are set by statute. Bar advocates are appointed in the majority of district court cases, which include misdemeanor cases and initial appearances in some felony cases. It is estimated that private counsel provide representation to more than 90 percent of the over 200,000 new criminal and civil cases assigned to CPCS each year.

The 13 CPCS regional public defender offices are staffed by full-time public defenders representing criminal defendants only in superior court or felony-level cases. In addition, there is an appellate defender office and two CPCS family law offices with full-time staff representing parents and children in child protective cases, which are initiated to resolve issues of suspected abuse and neglect of children. In addition, CPCS contracts with 12 local Bar Advocate Programs, which are located in the various counties, to provide oversight of the private bar advocates.

However, in 2005 the Massachusetts Legislature made significant systemic changes to the Massachusetts system of indigent defense and substantially increased the appropriation for indigent defense services.⁹ A bill was passed that increases hourly compensation rates for court-appointed counsel, significantly expands the statewide public defender program, strengthens

⁸ Representation is provided for criminal defendants, juveniles in delinquency proceedings, and in a variety of civil cases including civil commitment, guardianship proceedings, sexually dangerous persons civil commitments, sex offender registry proceedings, CHINS proceedings, and representation of parents and children in care and protection cases, termination of parental rights cases and some child custody cases in which there is state intervention.

⁹ The changes came after years of pressure on the Legislature to increase compensation rates for court-appointed counsel by CPCS. The major catalysts for change were two lawsuits filed with the highest court in Massachusetts challenging the constitutionality of the provision of indigent defense services, a shortage of qualified court-appointed counsel resulting in hundreds of indigent defendants left without counsel, and the recommendations of a legislative commission charged with evaluating Massachusetts' indigent defense system. See *Nathaniel Lavalley, et al. vs. The Justices of the Springfield District Court*, 442 Mass. 228 (2004) (after two days passed where no attorneys appeared in Hampden County (Springfield, MA) to accept new criminal court assignments, and at least 19 indigent defendants were being held in custody without counsel, CPCS, joined by the ACLU, filed a petition in the Supreme Judicial Court (SJC) on behalf of unrepresented indigent criminal defendants in Hampden County), *Arianna S., et al. v. Commonwealth of Massachusetts, et al.*, SJ-2004-0282 (filed June 28, 2004) (working pro bono with the assistance of The Spangenberg Group, Holland & Knight, filed a systemic statewide suit that included not only criminal defendants but child welfare cases as well, alleging that Massachusetts system of indigent defense was unconstitutional).

indigency verification procedures and establishes two new commissions, one to study decriminalization and one to examine alternative revenue sources to fund indigent defense.

The bill significantly expanded the statewide public defender program by adding 11 pilot public defender programs for representation in misdemeanor cases, resulting in 114 new attorney positions. This nearly doubles the number of public defenders in the state. The legislation also allowed for the hiring of 20 additional attorneys to handle children and family law and/or juvenile delinquency cases. During the fiscal year 2005 legislative session, money to fund the offices was not appropriated; however, during the 2006 legislative session, money was appropriated to fund the offices for fiscal year 2007.

The increase in compensation rates for court-appointed counsel resulted in nearly a \$29 million, or 24 percent, increase in statewide indigent defense expenditures from fiscal year 2005 to fiscal year 2006.

Michigan

2005 Pop.: 10,120,860

No. of Counties: 83

At the trial level, each of Michigan's 83 counties funds and organizes its own indigent defense delivery system, using a public defender, assigned counsel or contract attorney program. Wayne County (Detroit) is one of the few large metropolitan areas in the U.S. that provides indigent defense representation primarily with private, court-appointed attorneys.

At the appellate level, the Appellate Defender Commission is a statutorily created, independent, seven-member body which provides oversight to two divisions. The first division, the State Appellate Defender Office, is state-funded, staffed by a full-time State Appellate Defender, and mandated to handle 25 percent of the state's indigent appellate cases. The second division, the Michigan Appellate Assigned Counsel System, is responsible for ensuring that all other indigent appellants receive competent representation through a statewide, private assigned counsel system. Administrative costs for the Appellate Assigned Counsel System are paid by the state while counsel are compensated by the counties.

Minnesota

2005 Pop.: 5,132,799

No. of Counties: 87

The Minnesota State Board of Public Defense is a fully state-funded judicial branch agency that provides trial and appellate defender services. A seven-member commission selects a State Public Defender and sets standards for public defenders and court-appointed counsel. Ten Judicial District Public Defender Offices provide criminal defense services to indigent persons in felonies, gross misdemeanors, misdemeanors, juvenile delinquency, and Children In Need of Protective Services (CHIPS) cases. There are also two regional appellate defender offices providing services to indigent clients in direct appeals of their convictions, post-conviction proceedings, and to prisoners who need assistance with legal problems. The State Public Defender also represents individuals who are subject to supervised release/parole revocations and individuals who are subject to community notification hearings and prison disciplinary proceedings.

Indigent defense services became fully state-funded in 1995. Prior to that time, the Board of Public Defense was responsible for representation in all appeals, felony and gross misdemeanor cases in the state, and in misdemeanor and juvenile delinquency cases in five of 10 judicial districts.

Most conflict of interest cases are handled by part-time public defenders who are employed by the State Board of Public Defense but who maintain private offices.

Mississippi

2005 Pop.: 2,921,088

No. of Counties: 82

In 2000, Mississippi made major changes to indigent defense in the state by repealing the Mississippi Statewide Public Defender Act of 1998 and creating two state-funded offices responsible for capital defense. The repealed Public Defender Act established a statewide commission on indigent defense, and would have created district defender offices in each judicial district, with an executive director overseeing the offices. When enacted, the Act was intended to provide Mississippi with a statewide, state-funded system for representing indigent defendants in felony cases. The district defender offices, however, were never funded.

Indigent defense services at the non-capital trial level are paid for and provided as they were before repeal of the Act: on a county-by-county basis. Counties have the option of creating a public defender or assigned counsel program. Many have opted to create part-time public defender programs whereby attorneys work under contract with the county providing indigent defense representation. There are only four full-time county public defender programs in the state; however, most of the remaining 78 counties have part-time public defenders.

After repeal of the Act, the legislature created two statewide and state-funded offices for representation of indigent defendants in death penalty cases, the Mississippi Office of Capital Defense Counsel and the Mississippi Office of Capital Post-Conviction Counsel. However, during the fiscal year 2005 legislative session, both death penalty offices were transitioned from general fund agencies to special fund agencies, now funded by criminal case assessments.

The staff of the Mississippi Office of Capital Defense Counsel represent indigent defendants in capital trial and direct appeal proceedings. The director of the office has discretion to appoint outside counsel to provide representation to defendants with whom the office has a conflict of interest and to handle cases the office cannot properly handle due to its caseload level. The Mississippi Office of Capital Post-Conviction Counsel represents indigent inmates under sentence of death in post-conviction proceedings. The office may continue to represent said individuals in federal habeas corpus proceedings if the office is appointed to do so by a federal court.

Effective July 1, 2005, an Office of Indigent Appeals was created. The office is funded by criminal case assessments. The act creating the office provides for a director and five appellate defender assistants plus support staff. There is a provision in the act for hiring conflict and overflow attorneys without fee caps.

As stated above, Mississippi transitioned both of its death penalty offices from general fund agencies to special fund agencies. The statute increases criminal case assessments on all violations (traffic tickets, fish and game, felonies, DUI, other misdemeanor) and earmarked \$2.29 of each individual's assessment for the Capital Post-Conviction Counsel Office and \$1.89 of each individual's assessment for the Office of Capital Defense Counsel. An additional \$2.33 of each criminal case assessment is for the newly-created Office of Indigent Appeals. Also, money collected from fines is to be kept on the local level to fund the criminal justice system, including payment of court-appointed counsel, jury costs, experts, etc. However, the money is placed into each county's general fund, and no entity tracks the amounts collected to determine whether the money is spent on the criminal justice system. Finally, the Office of Capital Defense Counsel receives \$1 from a criminal assessment fee on all felony and misdemeanor convictions that is earmarked for a special fund to pay experts.

Missouri

2005 Pop.: 5,800,310

No. of Counties: 114

The state-funded Missouri State Public Defender system provides representation to indigent defendants in all criminal cases. The State Public Defender has three divisions that provide representation to indigent defendants at trial, appeal and in capital proceedings. The Public Defender maintains 36 regional offices to handle trial cases throughout the state and three appellate offices. Most trial-level conflict of interest cases are handled by another regional office in the state. A Commission appointed by the Governor selects the State Public Defender's director and deputies and provides oversight for the program.

Montana

2005 Pop.: 935,670

No. of Counties: 56

In June 2005 the Montana Legislature passed the Montana Public Defender Act, which completely shifted funding and oversight of indigent defense from the counties to the state. The Act created an eleven-member public defender commission to supervise the provision of defense counsel. There is now a statewide chief public defender, administrative officer, training coordinator and contract supervision personnel. There will also be regional deputy public defenders as needed. The Act requires the Commission to establish statewide indigent defense standards including caseload standards, a conflict of interest policy and training.

Previously, counties operated a variety of indigent defense programs including public defender offices, contract attorneys, and ad hoc court-appointed counsel systems. The absence of statewide oversight resulted in widely varying levels of compensation and quality of representation among the State's 56 counties. The new Act seeks to remedy these problems by providing for a Commission that will regulate the quality of indigent defense.

The newly created commission will also absorb the only statewide office from the old system, a state-funded, three-person appellate public defender office, which handles direct appeal and post-conviction cases where ineffective assistance of counsel is alleged. A five-member commission had provided oversight for the office, which will now be the responsibility of the new commission.

Previously, funding for the indigent defense system in Montana came primarily through a state reimbursement program to county courts in criminal cases (except for misdemeanors); if state funding fell short, the counties paid the balance. This system had been in place since FY 2003 when the State of Montana shifted the primary responsibility for payment of indigent defense costs from the counties to the State using the reimbursement system. Prior to that, counties provided all funds for trial-level representation and received reimbursement for 65 percent of their district court indigent defense expenditures (including felony, misdemeanor and juvenile cases) from a fund administered by the state supreme court. In FY 2003, counties continued to pay the initial costs for public defender offices and for counsel appointed in youth-in-need-of-care cases but the State reimbursed the counties for 100 percent of their expenditures. Those attorneys who take indigent defendant cases under contract, or who are paid by the hour, were, and continue to be, reimbursed directly by the State. The new system, effective as of July 1, 2005, requires the state to pay for indigent defense directly, without the county reimbursement mechanism, and the State now funds misdemeanor cases in justice and municipal courts.

The Commission may employ counsel through a contract system or “other service delivery methods as appropriate.” The right to court-appointed counsel has also been widened in Montana to include not only indigent defendants charged with a felony or misdemeanor for which there is a possibility of incarceration, but to include proceedings to determine parentage, for parents and children in termination of parental rights proceedings, in post-conviction cases, habeas corpus proceedings, for parents or guardians in an involuntary commitment proceedings of a developmentally disabled person, in involuntary commitment proceedings – including for alcoholism, and for a witness in a criminal grand jury proceeding. There are also a number of categories for which a person is entitled to assistance of counsel at public expense regardless of the person’s financial ability to retain private counsel, which include juvenile delinquency cases and a number of cases involving juveniles and mentally disabled individuals.

Nebraska

2005 Pop.: 1,758,787

No. of Counties: 93

In Nebraska, each of the state’s 93 counties organizes its own indigent defense system. State statute requires elected public defenders in counties with a population greater than 100,000 population, which affects just three of 93 counties. Most funding is provided by the counties; however, the Nebraska Commission on Public Advocacy provides limited legal services and resources to assist counties through its capital litigation and appellate divisions and major case resource center. In cases in which the Commission on Public Advocacy is involved, counties do not pay for any costs of the defense. The Commission, created by the state legislature in 1995, consists of nine attorneys appointed by the governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association after consultation with the board of directors of the Nebraska Criminal Defense Attorneys Association. The Commission appoints a chief counsel to oversee the staffed office.

In 2001, the Commission was authorized to reimburse counties for 25% of their felony case representation costs if they met standards and guidelines developed by the Commission. In FY 2002 the Commission received \$660,000 in funding. However, before the Commission

could begin reimbursing the counties, due to a state budget deficit, the \$660,000 was removed from the Commission's budget. To date that money has not been reinstated.

Concerned about the uncertainty of general revenue funding, in the 2004 legislative session the Commission successfully sought a change in the way in which it is funded. Now the agency is funded by filing fees. An across-the-board increase in the filing fee in criminal and civil cases was enacted to create non-general revenue funds for the Commission. The goal of the change was to allow the Commission to continue the staffed programs that were already in place; however, counties must still cover the costs of any services they receive from the Commission. The total amount received in FY 2005 from non-general revenue sources was \$1,074,414. Of this, \$845,781 was appropriated for the Commission's operating budget, and the remainder was deposited into a cash fund for future use. In FY 2006, \$1,150,704 was collected from non-general revenue sources, and of this, \$936,879 was appropriated for the Commission's operating budget, with the remainder deposited into a cash fund for future use.

Nevada

2005 Pop.: 2,414,807

No. of Counties: 16

By statute, Nevada counties with a population in excess of 100,000 must have public defender offices. The two counties affected by the statute - Clark County (Las Vegas) and Washoe County (Reno) - fund their own public defender programs. Nevada's remaining counties have the option of contributing to the state/county funded State Public Defender, or funding their own services to provide representation to indigent defendants. The Public Defender's Office provides representation to indigent persons in criminal cases, involuntary mental commitment cases, and juvenile courts in counties under 100,000 population which have not established a county public defender's office. The office also represents defendants on direct appeal from the denial of petitions for post-conviction relief, and distributes payment to counsel appointed to represent post-conviction petitioners in district court pursuant to orders for payment from the district court. The State Public Defender's office is in Carson City, pursuant to statute, and covers Carson City and Storey County. There are two regional State Public Defender offices, covering five additional counties.

Besides Clark and Washoe counties, one other county - Elko County - also has a county-run public defender program. The remaining counties use flat-fee or low-bid contract programs to represent indigent defendants.

New Hampshire

2005 Pop.: 1,309,940

No. of Counties: 10

New Hampshire has two state-funded programs. The State Public Defender, which operates as an independent, private non-profit corporation, provides primary representation in trial and appellate cases through nine regional offices and an appellate office that is affiliated with the Franklin Pierce Law Center. For conflict cases, the New Hampshire Judicial Council administers assigned counsel and contract defender programs.

New Jersey**2005 Pop.: 8,717,925****No. of Counties: 21**

The state-funded New Jersey State Public Defender is a statewide program which is responsible for all indictable felony offenses and juvenile delinquency cases in New Jersey's thirteen county-based superior courts, along with direct appeals from these cases. The Public Defender maintains regional offices covering each of New Jersey's 21 counties. In addition, the State Public Defender is responsible for establishing a private, court-appointed attorney program for conflict cases. The Public Defender sets the rates of compensation for court-appointed counsel.

Misdemeanors in New Jersey are tried in municipal court. Since 1998, municipalities have been required to appoint a municipal public defender, the cost of which may be offset by a (waiveable) public defender application fee of up to \$200, payable over a four-month period, charged to individuals who use the defender's services. (Before the law was enacted, in July 1997, only 383 of New Jersey's 537 municipal courts employed a municipal public defender. The remaining 154 municipal courts required involuntary pro bono services of private bar members.) Funds collected through the application fee are deposited in a dedicated fund to be used exclusively to meet all costs incurred in providing indigent defense services at the municipal court level, including the cost of expert investigation and testimony. The amount of funding for indigent defense at the municipal level in New Jersey is not included in the accompanying table.

New Mexico**2005 Pop.: 1,928,384****No. of Counties: 33**

New Mexico's state-funded Public Defender Department provides primary representation in trial and appellate cases throughout the state. The program has centralized units for appellate, mental health, capital and post-conviction cases. At the trial level, approximately half of the state's counties (the more populous ones) are served by one of the State Public Defender Department's 12 regional trial offices; private attorneys who contract with the Department represent indigent defendants in the remaining counties. The Chief Public Defender is appointed by and serves at the pleasure of the Governor.

New York**2005 Pop.: 19,254,630****No. of Counties: 62**

New York's criminal indigent defense system is primarily funded by its 62 counties, which, by statute, may utilize a public defender program, private legal aid society and/or a coordinated assigned counsel system to provide indigent defense services. The state provides some monies to counties through its Indigent Legal Services Fund (ILSF) and provides full funding for representation of children in dependency and delinquency cases. Funding for representation of adults in dependency cases is a county responsibility.

With regards to representation of indigent defendants in capital cases, in June 2005, New York's highest court struck down the state's death penalty statute in *People v. LaValle*, finding a central element of the statute's sentencing provisions unconstitutional. Attempts to revive the law in the 2005 legislative session failed, leaving New York without a death penalty. As a result

of the legislature's inability to reenact a suitable death penalty statute, fiscal year 2006 funding for the Capital Defender Office (CDO) was cut by 70 percent, retroactive to April 1, 2005. The CDO was established in 1995 under New York State's death penalty statute to provide representation and to support and assist at all stages of capital litigation. The CDO had staff in three offices who provided direct representation and also contracted with private attorneys and other indigent defense organizations, such as the New York Legal Aid Society Capital Defense Unit in New York City.

Since the mid-1990s, New York City has experienced noteworthy changes in the way it delivers indigent defense services. Until 1995, the Legal Aid Society of New York provided all primary representation for trial, appeal and juvenile cases (as well as civil legal representation) in New York's five boroughs. Since 1995, the city has diversified its primary providers of indigent defense services by contracting with a number of non-profit organizations which now handle a portion of the City's primary indigent defense cases. There are now alternate, non-profit defender programs in each of New York City's five boroughs and three additional non-profit appellate defender programs. One additional program, the Neighborhood Defender Service of Harlem is a small, community-based law office that provides legal representation to inner city residents in upper Manhattan through a holistic team defense involving civil and criminal attorneys, social workers, investigators, paralegals, and college and law school interns.

Although the counties are primarily responsible for funding indigent defense services, the state legislature recently created the Indigent Legal Services Fund under State Finance Law after the increase in assigned counsel fees.¹⁰ ILSF was created to help the state pay for indigent defense expenditures in Family Court and to help the counties pay for all other indigent defense costs. The state funds may not be used by counties or cities to supplant local funds that these entities "would otherwise have had to expend for the provision of counsel and expert, investigative and other services pursuant to article eighteen-b of the county law." Rather, the state funding must be used to supplement local funds. The bill requires each county to maintain the total amount of expenditures for indigent defense as of FY 2002 until FY 2006.

ILSF is funded by four revenue sources created by the state to help fund the new assigned counsel fees which took effect January 1, 2004. Approximately half of the total state expenditures for indigent defense come from these four revenue sources. The funding sources are: a \$35 DMV fee for lifting a license suspension; \$27 of a \$52 OCA fee for county-based

¹⁰ Effective January 1, 2004, court-appointed counsel in New York received a substantial increase in compensation. Prompted in part by Manhattan Supreme Court Justice Lucindo Suarez's February 2003 order in *New York County Lawyers' Association v. State of New York*, 763 N.Y.S.2d 397 (Sup. Ct. N.Y. Co. 2003), finding that the current rates of compensation were constitutionally deficient and thus prevented defendants from receiving meaningful and effective representation in New York City, the New York State Assembly raised the old rate of \$25 an hour for out-of-court work and \$40 an hour for in-court work fees to mirror those proposed in Governor George E. Pataki's 2003-2004 budget proposal. The new statutory rate is \$75 an hour in all cases, including appeals, except misdemeanors, where the rate is \$60. In all cases where the hourly rate is \$75, the per-case cap is \$4,400, an increase from \$1,200, while the per-case cap in misdemeanor cases is \$2,400, up from \$800. Additional changes increase the cap for fees provided to experts and investigators from \$300 per investigative, expert or other service provider to \$1,000 per retainer. A court may exceed the caps in extraordinary circumstances.

criminal history checks; a \$50 increase in attorney registration fees; and a \$10 increase in mandatory surcharges for parking violations. By statute, the first \$25 million in collected revenue each year goes to the state to reimburse the Law Guardian Program, and the remainder is distributed by the State Comptroller to the counties to reimburse the counties for a portion of their cost. A county's ILSF distribution amount is determined by calculating the total amount of statewide county expenditures, divided by the percentage of the individual county's total share. In the first year of ILSF, state revenue sources brought in \$76.5 million, which left \$51.5 million to be distributed to the counties. This distribution amount was slightly short of the \$51.9 million increase in county expenditures from 2003 to 2004. In the second year, the state revenue brought in \$79.2 million. After subtracting the first \$25 million for the Law Guardian Program, the remaining \$54,221,048 was distributed to the counties in March 2006.

North Carolina

2005 Pop.: 8,683,242

No. of Counties: 100

In North Carolina, the state pays for all indigent defense expenditures. Until 2001, counties were solely responsible for organizing the delivery of trial-level indigent defense services. Thirteen of the state's 100 counties employ the public defender model while the rest used assigned counsel or contract defenders.

In 2000, the North Carolina General Assembly enacted the Indigent Defense Services Act of 2000, which created an independent agency within the state's Judicial Department called the Office of Indigent Defense Services (the "IDS Office") and includes a 13-member Commission on Indigent Defense Services (the "IDS Commission"). The IDS Office and IDS Commission have broad authority over the delivery of indigent defense services in North Carolina.

The chief responsibility of the IDS Commission is to develop and improve programs through which the IDS Office provides legal representation to indigent persons. The IDS Commission appoints the Director of the IDS Office and develops standards governing the provision of services under the Indigent Defense Services Act. The IDS Commission is also responsible for determining the methods for delivering legal services to indigent persons throughout the state, however, legislative approval is required to create or abolish a public defender office. Appellate representation is coordinated by the Office of the Appellate Defender and the Office of the Capital Defender does the same for capital cases.

North Dakota

2005 Pop.: 636,667

No. of Counties: 53

In April 2005, the North Dakota Legislature enacted legislation to reform the state's indigent defense system. The previous system, although almost entirely state-funded, had long suffered from independence problems and insufficient funding. The new system features a seven-member Commission on Legal Counsel for Indigents, which is responsible for "developing and monitoring a process for the delivery of state-funded legal counsel services for indigents" and selecting a director responsible for carrying forth policy of the Commission on a day-to-day basis. Funding for the new indigent defense system will nearly double: for the 2005-2007 biennium the Commission received an appropriation of \$9,492,775 compared to \$5,099,326 that was expended in 2003-2005.

The process leading to creation of the new system began in 2003, when the North Dakota Legislative Council was directed by resolution "to study the state's method of providing legal representation for indigent persons and desirability of establishing a public defender system." In response to the resolution, the President of the State Bar of North Dakota formed a task force to work with the Legislative Council Criminal Justice Interim Committee in fashioning an acceptable legislative package for the 2005 session. In November 2003, the State Bar of North Dakota Task Force on Indigent Defense (SBAND Task Force) enlisted the assistance of The Spangenberg Group to conduct a study of the state's indigent defense system. The study was jointly sponsored by the SBAND Task Force and the American Bar Association Bar Information Program.¹¹

Prior to these changes, North Dakota was the only state in the country that used an indigent defense model relying primarily on private attorneys working under contract with judges. Attorneys agreed to accept flat fee contracts requiring them to handle an unlimited number of cases in a given county or judicial district.

The new Commission on Legal Counsel replaces the North Dakota Legal Counsel for Indigents Commission (NDLCIC). That body, whose eight members were appointed by the Chief Justice of the Supreme Court from nominations by judges, the state bar, the Attorney General and the Legislative Assembly, was charged with reviewing indigent defense caseload data, preparing recommended indigent defense budgets, and adopting assigned counsel eligibility qualifications. However, the NDLCIC was essentially advisory in nature; it had no real authority and no staff.

In addition to developing standards governing indigent defense services, the Commission is responsible for establishing and implementing a process of contracting for legal counsel services; establishing public defender offices in regions of the state as the commission considers necessary and appropriate; determining a reasonable rate of compensation for lawyers appointed to represent indigent persons; establishing a method for accurately tracking and monitoring caseloads of contract counsel and public defenders; and approving and submitting a biennial budget to the Office of Budget.

Funding for the indigent defense system comes primarily from the general fund. However, revenue from a \$25 application fee assessed on defendants seeking appointed counsel goes to a special fund in the state treasury, the Indigent Defense Administration Fund. Monies in the fund may only be used by the Commission on Legal Counsel for Indigents in the administration of the indigent defense system. For the 2005-2007 biennium, approximately \$8.5

¹¹ The Spangenberg Group, *Review of Indigent Defense Services in North Dakota* (January 30, 2004). In our 2004 study, TSG found that North Dakota ranked near the bottom among all states in the nation for indigent defense expenditures and cost-per-capita. One of the ongoing results of the low funding was that contract attorneys were not paid uniformly throughout the state. In some areas, attorneys were paid roughly \$70 an hour while in other areas they were paid roughly \$40 an hour, with no case caps.

million was appropriated from general revenue funds, while the remaining appropriation of just under \$1 million came from the application fee.

The figure included in the chart at the end of this report does not include any expenditures under the new system, as it did not begin until January 2006.

Ohio

2005 Pop.: 11,464,042

No. of Counties: 88

The nine-member Ohio Public Defender Commission oversees the Office of the Ohio State Public Defender, which provides direct representation in a limited number of cases and distributes state reimbursement funds to counties to help defray the cost of locally delivered indigent defense services. Through the State Public Defender's Legal Division, the primary focus of the Ohio Public Defender is on the appeals and post-trial activities of criminal cases. Approximately one half of the staff and resources of the Ohio Public Defender is devoted to death penalty cases, where attorneys represent defendants in death penalty trial, direct appeal, state post-conviction and federal habeas cases. The Ohio Public Defender also offers representation at trial when requested by the courts, as well as parole and probation revocation hearings.

The Office of the Public Defender oversees a Multi-County Program in 10 of Ohio's 88 counties. Under this program, the participating counties have entered into contracts with the Ohio Public Defender to provide indigent defense services. The Ohio Public Defender in turn contracts with local private attorneys or law firms in the region who provide trial and appellate indigent defense services. In addition, the Commission operates a branch public defender office in one county, which is funded in the same manner as all other county programs (a combination of county funds and state reimbursements). Other indigent defense services are provided at the county level.

Ohio's counties may select their own delivery model, and those counties which comply with the Commission's standards are eligible for partial reimbursement for expenditures in connection with these services. The state-funded Public Defender Commission reimburses counties up to 50 percent of their indigent defense expenditure, including attorney fees, investigator/expert fees, travel expenses, etc., but the rate of reimbursement fluctuates each year, depending on the revenue obtained. Generally, reimbursement is between 40 and 50 percent of the amount paid by the county; however, in fiscal year 2005 the amount was 31 percent. This program is supported in large measure by a \$15 assessment on all criminal convictions other than minor traffic offenses; the assessment is added to the bail premium of all defendants who post bond or at the disposition of the case if no bail is posted. The assessment, which increased from \$11 to \$15 as of October 1, 2003, is frequently waived by judges for indigents.

Oklahoma

2005 Pop.: 3,547,884

No. of Counties: 77

In Oklahoma's two largest counties, Tulsa and Oklahoma (Oklahoma City), the counties fund indigent defense services at the trial and direct appeal levels. Both counties have full-time public defender offices.

In 1991, the Oklahoma legislature created and funded a state agency for providing indigent defense services, the Oklahoma Indigent Defense System (OIDS). OIDS, with its five-member Board of Directors, is responsible for providing indigent defense services in 75 of Oklahoma's 77 counties. OIDS has separate, staffed capital trial, capital direct appeal, non-capital direct appeal and capital state post-conviction divisions. The majority of non-capital cases at the trial level are handled by attorneys working under contract with OIDS. A number of conflict and overload cases are handled by private attorneys who are appointed on a case-by-case basis and compensated on an hourly basis. Impetus for the new statewide system was a 1990 Oklahoma Supreme Court decision which held that the compensation system in effect for court-appointed counsel at the trial level was unlawful as an unconstitutional taking of property of court-appointed attorneys under the state constitution. *State v. Lynch*, 796 P.2d 1150 (Okla. 1990).

Since 1997, OIDS has opened four trial public defender offices to accept non-capital court appointments in 16 counties. The offices are located in areas where contract expenses have been typically higher than in other areas of the state, or where the agency's governing Board determined there was an inadequate level of interest expressed by the private bar in providing the necessary legal services.

Oregon

2005 Pop.: 3,641,056

No. of Counties: 36

Indigent defense services in Oregon are entirely state-funded. In 2001, the Oregon legislature created the state-funded Public Defense Services Commission (PDSC), which in turn was required to establish an Office of Public Defense Services (OPDS). The Commission, whose seven members are appointed by the Chief Justice, serve as the governing body for the office. As of July 1, 2003, the Commission assumed all duties and services of the Indigent Defense Services Division (IDSD) of the State Court Administrator's Office. These services include administration of county contracts for all indigent defense representation (trial and appellate, except those cases which the state appellate office handles) in Oregon's state courts. County programs may choose a public defender, private bar contract or court-appointed counsel system.

The first duty of the Commission was to assume responsibility for the majority of appellate criminal defense, which for 38 years was handled by the State Public Defender's Office. Effective October 1, 2002, the Public Defender's Office and its governing Public Defender Committee were abolished, with all duties transferred to the Commission. All staff remained with the new entity, however the Commission has authority to abolish positions and change duties to the extent that the commission finds it desirable to do so.

Oregon's statewide indigent defense program is responsible for numerous types of cases, including termination of parental rights, dependency (adults and juveniles), civil commitment, Psychiatric Security Review Board, child support contempt, felonies, misdemeanors, juvenile delinquency, appeals, and habeas corpus petitions.

Pennsylvania

2005 Pop.: 12,429,616

No. of Counties: 67

Each of Pennsylvania's 67 counties organizes and funds its own indigent defense delivery system. By statute, each county must have a local public defender. Pennsylvania is one of just two states that provides no state funding for indigent defense programs (Utah is the other state).

Rhode Island

2005 Pop.: 1,076,189

No. of Counties: 5

Rhode Island has a statewide, state-funded public defender system, funded primarily through general revenue, with statewide appellate, family court and parental rights divisions, and five branch offices that handle trial cases. The Office of the Public Defender provides direct representation to indigents charged with misdemeanors and felonies in all district and superior courts. The Public Defender also represents juvenile delinquents and the parent or guardian in abuse and neglect cases. Court-appointed counsel represent defendants in conflict of interest cases.

South Carolina

2005 Pop.: 4,255,083

No. of Counties: 46

South Carolina has 40 public defender programs covering its 46 counties, and a statewide appellate defender office. Counties have the primary responsibility to fund their public defender offices, but the state provides supplemental funding for indigent defense services to each county based upon population size. Over time, this state appropriation diminished with a reduction in appropriations from the legislature.

The Commission on Indigent Defense and the Office of Indigent Defense were established in the 1993 legislative session. The Office of Indigent Defense establishes indigency determination criteria, develops qualifications for services of public defenders' offices and administers appropriate distribution of funding for indigent defense. Additionally, the Office establishes and supervises training programs for public defender offices across the state and implements a central reporting system for the accurate compilation of statistical data regarding the operation of public defender offices. The Office serves as a clearing house and distribution source for publications and materials involving indigent criminal defense. The Commission on Indigent Defense is appointed by the Governor upon the recommendation of the South Carolina Public Defender Association. The Commission hires the Office's Executive Director.

The Office of Indigent Defense oversees the allocation of state funds to local trial indigent defense programs from two revenue sources: an up-front public defender application fee and a criminal conviction surcharge. These funding mechanisms were created in response to a 1992 South Carolina Supreme Court decision which found South Carolina's low statutory rates of compensation paid to court-appointed counsel in capital cases (\$15 per hour in-court and \$10 per hour out-of-court) to be constitutional, but concluded that the statutory limitation was only a limitation on the State's obligation to compensate counsel; the individual counties were responsible for supplementing the state's allowances. *Bailey v. State (South Carolina)*, 309 S.C. 455 (1992). Subsequently, the legislature created the South Carolina Commission on Appellate Defense to oversee the appointment of counsel on appeal.

As of July 1, 2005, the Indigent Defense Commission and the Commission on Appellate Defense have been consolidated.

South Dakota

2005 Pop.: 775,933

No. of Counties: 66

Each of South Dakota's 66 counties organizes and funds its own indigent defense delivery system; the majority of counties use contract or assigned counsel systems but some counties use public defender offices. There are three full-time public defender offices in the state. Counties may opt to participate in a catastrophic indigent defense fund. The fund is administered the County Commissioners' Association. Essentially, the fund acts as insurance against small counties' extraordinary costs for complex cases, such as a death-penalty case, that may occur in their jurisdiction. Those counties with such catastrophic cases may apply to the commission for reimbursement up to 90 percent of all indigent defense costs above \$25,000. Member counties are then assessed an amount based on their population of the total amount by the requesting county. Currently, 55 of South Dakota's 66 counties participate in the fund.

Additionally, a portion of a \$30 fee levied on any penalty, assessment or fine is used to reimburse counties for a portion of the county expenditure for indigent defense services. South Dakota state law allocates \$6 from court costs to a court-appointed attorney and public defender payment fund and \$1 to an abused and neglected child defense fund. The State Treasurer annually distributes these monies to counties based on the amounts spent by each county for public defenders and court appointed attorneys in criminal and abuse and neglect cases.

Tennessee

2005 Pop.: 5,962,959

No. of Counties: 95

In Tennessee, with the exception of Shelby County (Nashville) and Davidson County (Memphis), which have their own respective public defender offices funded through a combination of state and local monies, the state funds indigent defense and each judicial district has an independent public defender office. However, Tennessee does not have a statewide body that oversees the state's indigent defense services at the trial level. Rather, in each of Tennessee's 31 judicial districts, the voters publicly elect a public defender to serve their district. There are 31 full-time circuit public defender offices in the state.

Each elected public defender participates in the Tennessee District Public Defenders Conference. The Conference helps public defenders across the state discharge their official duties and assists with the enactment of laws and rules of procedure necessary for the effective administration of justice. The Executive Committee of the Public Defenders Conference is the decision-making body of the Conference.

The Office of the Executive Secretary is the central administrative office for all but two of the district public defenders (Nashville and Memphis). The executive secretary, elected every four years by the district public defenders, is responsible for budgeting, payroll, purchasing, personnel, and administration of all fiscal matters pertaining to the operation of district public defender offices. Other duties include coordinating defense efforts of the various district public

defenders, development of training programs, and maintaining liaison with various state government agencies. The executive secretary is elected by the district public defenders for a four-year term.

In addition to the District Public Defenders Conference, Tennessee has a Post-Conviction Defender Commission which was established in 1995. The commission oversees the budget for, and appoints the head of, the statewide Post-Conviction Defender Office that is responsible for representing indigent persons convicted and sentenced to death in collateral actions and some direct appeals in state court, as well as collateral actions in federal court.

In 1999, TSG conducted a statewide case-weighting study of the Tennessee District Public Defenders for the Tennessee Comptroller of the Treasury. Each year, as required by Tennessee statute, the Tennessee Comptroller updates the case-weighting study that TSG originally conducted in 1999, in order to calculate the current workload and staffing needs of the District Public Defenders.

Texas

2005 Pop.: 22,859,968

No. of Counties: 254

In 2001, the Texas legislature enacted the Texas Fair Defense Act, which substantially reformed the indigent defense system in Texas. Reports prepared by the State Bar of Texas, Texas Appleseed and The Spangenberg Group documented serious problems with the indigent defense system in Texas, which placed total responsibility for organizing and funding indigent defense programs on the 254 counties. The Fair Defense Act created the Texas Task Force on Indigent Defense (Task Force) to assist local government in improving the delivery of indigent defense services and to provide state oversight of services.

The Task Force is a standing committee of the Texas Judicial Council and is composed of eight ex officio members and five members appointed by the Governor, and has a staff of seven. The Task Force promulgates policies and standards which counties must adhere to in order to receive state funds administered by the Task Force. Counties are still responsible for providing a large percentage of funds and organizing their indigent defense programs, but in order to comply with the Act, each county must establish: 1) procedures for providing prompt access to appointed counsel; 2) fair and neutral methods for selecting appointed counsel; 3) qualifications, for appointed counsel; 4) financial standards and procedures for determining when a person is indigent; and 5) procedures and fee schedules for appointed counsel, experts and investigators. Until the Act was in place, the only state money available for indigent defense in Texas had been a small amount of funds appropriated to partially compensate attorneys handling capital state post-conviction cases, and to pay for support services in these cases.

As part of its mandate, the Task Force awards counties formula grants and discretionary grants to assist in funding indigent defense services. Formula grants are allocated to counties through a formula based upon population figures, or any other criteria designated by the Task Force. Discretionary grants are awarded "to encourage courts and counties to examine their indigent defense processes to improve the local system by developing innovative programs." Grants are awarded on a competitive basis and to be eligible to receive grant money counties

must comply with the requirements of the Fair Defense Act. Counties must agree to contribute monetarily to the programs, eventually taking over the full responsibility for funding the new programs.

In fiscal year 2005, the Task Force awarded approximately \$11.2 million in state formula grant funds to 218 qualifying counties to improve indigent defense. This is up from \$7.2 million in 2002, the first year grants were awarded. In fiscal year 2006, that number was increased to \$12.7 million for 222 counties. Each of Texas' 254 counties organizes and funds its own indigent defense delivery system. While a few counties have public defender programs, the majority rely upon assigned counsel or contract defenders.

However, the number of public defender offices has been increasing in recent years through the Task Force's discretionary grant awards. Multi-year discretionary grants have been awarded to create an appellate public defender in Bexar County; a mental health division added to the existing public defender office in Dallas County; a mental health public defender unit in El Paso County; a misdemeanor public defender office that will represent in-custody defendants in Hidalgo County; a general public defender office in Kaufman County; a mental health/mental retardation office in Limestone County; a mental health public defender office to serve indigent defendants with serious mental illness in Travis County; a regional public defender, covering several neighboring counties in Val Verde County; and a general public defender office in Willacy County. Grants to all nine counties total more than \$2.1 million.

Utah

2005 Pop.: 2,469,585

No. of Counties: 29

Utah is one of only two states in the country that provides no state funding for indigent defense services at the trial or appellate level. While there are three public defender programs in the state, the majority of counties use contract or assigned counsel to represent indigent defendants. Twenty-four of Utah's 29 counties participate in an Indigent Capital Defense Trust Fund. Those counties which contribute money to the pool can draw from it to reimburse attorneys in capital cases for up to \$100,000 if the death penalty is sought and up to \$60,000 if the death penalty is not sought. There was similar legislation for a felony defense trust fund; however, the minimum number of participating counties (15) needed for the fund to operate was never reached.

Vermont

2005 Pop.: 623,050

No. of Counties: 14

Vermont has a state-funded public defender system, the Office of the Defender General, with full-time staff offices in approximately half of the counties and contract counsel in the remaining counties providing trial and appellate representation. Staff attorneys handle approximately 75 percent of the cases in which assignments are made. Contract counsel provide representation in public defender conflict-of-interest cases and in counties where there is no public defender office.

The Office of the Defender General is responsible for providing representation to adult, indigent criminal defendants in felony and misdemeanor cases, direct appeals, and in certain

probation and parole revocation proceedings. The program represents juveniles in various proceedings, including those in which a child is alleged as delinquent, CHINS proceedings, and when the parent is the subject of a court proceeding to terminate the parental rights on the basis of conduct that could be grounds for a criminal conviction. The Office of the Defender General has a central appellate office. The Defender General is appointed by and serves at the pleasure of the Governor.

Virginia

2005 Pop.: 7,567,465

No. of Counties: 95

In Virginia, where the state funds indigent defense, trial and appellate representation is provided either by attorneys from 25 regional trial public defender offices, four capital defender offices, one appellate office, or by appointed counsel, who handle conflicts from the public defender offices and cases filed in the other counties where there is no public defender office. Prior to 2004, each of the local public defender offices was under the control and supervision of a Chief Public Defender who was selected by the Virginia Public Defender Commission, which was legislatively created in 1972.

Effective July 1, 2004, a newly created Virginia Indigent Defense Commission (VIDC) has the responsibility of overseeing the provision of legal counsel to indigent defendants in Virginia. The organization is charged with overseeing the training and certification of both private court-appointed attorneys and public defenders. The newly established VIDC replaces the Virginia Public Defender Commission. There was previously no oversight system for private court-appointed counsel.

Among its other responsibilities, the VIDC will be responsible for: establishing official standards of practice for court-appointed counsel, guidelines for the removal of an attorney from the official list of attorneys qualified to receive court appointments, and appropriate caseload limits for public defender offices; maintaining, hiring and employing executive directors and public or capital defenders for each public defender and regional capital defender office established by the General Assembly; and ensuring that each public defender office collects and maintains caseload data. The Commission is required to report to various legislative committees each year on status of indigent defense in the state, including Virginia's national ranking in pay for court-appointed counsel. Specific requirements regarding certification of court-appointed attorneys have also been created by statute and will become effective July 1, 2005.

While the hourly rate set by the state supreme court is \$90 per hour for all work performed in or out of court, state statute restricts per-case payments to court-appointed counsel to a maximum of \$120 for misdemeanors in district court and juvenile delinquency cases, \$158 for misdemeanors in circuit court, \$445 for felonies where the potential sentence is less than 20 years, and \$1,235 for felonies that carry a potential sentence of 20 years or more. These caps are non-waivable. However, because the Virginia Legislature has not appropriated funds sufficient to pay court-appointed counsel at these levels, the Virginia Courts have reduced the per-case maximums payable to attorneys in proportion to the funding the legislature has actually appropriated. In 2005, after an additional \$2 million appropriation for court-appointed counsel fees, the per case maximums were effectively raised from \$1,096 to \$1,186 for felonies

punishable by more than 20 years, and from \$395 to \$428 for felonies punishable by less than 20 years. There was no change in the \$112 cap for misdemeanor cases in district court and juvenile delinquency cases, nor in the \$148 cap for circuit court misdemeanors.

In the most recent legislative session ending in June 2006, the legislature appropriated an additional \$2.6 million over the biennium to be used for 32 new public defender and support staff positions, and to fully fund the statutory caps. The state supreme court is responsible for developing a payment scheme to first fully fund the statutory caps for the most serious non-capital felonies and then, "should funds still remain in this appropriation, to [fund] the other statutory caps, in declining order of the severity of the charges to which each cap is applicable."

Washington

2005 Pop.: 6,287,759

No. of Counties: 39

In April 2005, the Washington State Legislature made several changes to its system for funding indigent defense. Previously, indigent defense services in Washington were funded entirely by the counties, and organized on the county level for trial representation through public defender, assigned counsel and contract models. While counties still determine the type of system they have, the state will now contribute some funds for indigent defense.

Under the new law, the preexisting Office of Public Defense (OPD) will be responsible for distributing any funds provided by the legislature to counties and cities meeting public defense standards endorsed by the Washington State Bar Association, or counties making "appreciable demonstrable improvements" toward meeting these standards. To receive funding, counties must show that attorneys providing indigent defense services are attending at least one annual required training; attorneys who handle the most serious cases meet minimum qualifications; and that counties have independent funding for conflict counsel, investigators, and experts. Money will primarily be distributed to eligible counties based upon population levels and the county's percentage share of the total number of superior court criminal cases among eligible counties. In fiscal year 2005 no money was appropriated by the legislature to provide funds to counties and cities. However, in fiscal year 2006, the legislature appropriated \$2.6 million for the counties, and \$300,000 for disbursement among eligible cities. These states funds will be provided to 38 of the 39 counties (one did not apply for the funds) for use in 2007.

Also in 2005, the legislature passed a bill containing a list of specific non-general fund revenue sources, including various fees and fines in civil and criminal cases, to fund a new equal justice account that will distribute money for, among other things, criminal indigent defense pilot programs and the representation of parents in dependency and termination proceedings. It is expected that by the end of 2006, these pilot programs will expand to 18 of the 39 counties. The OPD will work with jurisdictions receiving money for additional attorney positions to improve public defense and will track the results and report to the legislature.

Washington's funding scheme also provides some state money to the Washington Defender Association to provide training and technical assistance to public defenders in misdemeanor and felony cases, and the Washington Death Penalty Assistance Center, which provides training, resources, and consultation to capital defense attorneys.

Eleven counties currently have public defender programs as their primary indigent defense delivery system; the remaining counties use contract or assigned counsel programs as the primary system. The City of Spokane also has a municipal court public defender office. In appellate cases, the Office of Public Defense receives state funds to contract with private firms and attorneys in each of the state's three appellate divisions to provide representation in non-capital appeals. In death penalty appeals, a private attorney is appointed by the Supreme Court and compensated by the Office of Public Defense. Misdemeanor appeals are generally handled at the county level, except when the case raises an issue that the Court of Appeals wishes to address.

West Virginia

2005 Pop.: 1,816,856

No. of Counties: 55

In West Virginia, 100 percent of the statewide indigent defense funding comes from a general-fund appropriation. Since 1989, West Virginia Public Defender Services (PDS) has administered, coordinated and evaluated local indigent defense programs in the state's 31 judicial districts. PDS also provides training and technical assistance to indigent defense providers and operates an appellate division to represent indigent defendants in appellate cases in the supreme court. The Executive Director of PDS is authorized to make grants to, and contract with, public defender corporations in those judicial districts in which the chief judge and/or the majority of active local bar members has determined a need for a public defender office. Public defender corporations are non-profit organizations, each with a board of directors. Currently, 27 of West Virginia's 55 counties are served by 23 public defender corporations. The remaining 28 counties rely solely on assigned counsel to provide representation to indigent defendants.

Wisconsin

2005 Pop.: 5,536,201

No. of Counties: 72

Wisconsin has an integrated state public defender system with regional offices providing trial and appellate representation throughout the state. The Public Defender Board, which consists of nine members selected by the Governor and confirmed by the State Senate for staggered three-year terms, appoints the State Public Defender to supervise the operation, activities, policies and procedures of the Office of the State Public Defender (SPD). The SPD is organized into four divisions: trial, assigned counsel, appellate, and administrative. In addition, the SPD maintains an Office of Legal Counsel, an Office of Training and Development, and a Chief Information Officer. There are 38 field offices, 36 of which are trial-level offices, providing representation in every county in the state. Conflict and overflow cases are handled by certified assigned counsel.

In fiscal year 2002, we reported that SPD staff attorneys represented approximately 64 percent of the indigent defendants in Wisconsin, 26 percent were assigned to court-appointed counsel and the remaining 10 percent (misdemeanors only) were assigned to certified private bar attorneys via fixed fee contracts. In fiscal year 2005, this composition changed slightly – SPD staff attorneys represented approximately 54 percent of indigent defendants, 38 percent were represented by certified private attorneys on a rotation basis for an hourly rate, and the remaining 7 percent to private bar attorneys via fixed fee contracts for misdemeanors only.

The state-funded Wyoming State Public Defender handles indigent adult criminal and juvenile delinquency trial and appellate cases, with 16 branch offices throughout the state (including a Capital Case Unit). The Public Defender's Office acts as an independent operating agency under the executive branch of the state government. The state is responsible for 85 percent of the cost of the state public defender program, paid through general revenue funds, and counties contribute the remaining 15 percent of the cost. The State Public Defender is appointed by and serves at the pleasure of the governor.

Federal Model: the Criminal Justice Act

The Criminal Justice Act of 1964 (18 U.S.C. §3006A) governs the provision of legal services to indigent defendants accused of committing federal crimes. Under the Act, each United States District Court is required to develop a plan for furnishing counsel and investigative, expert and other services necessary for adequate representation in trial and appellate proceedings. The Criminal Justice Act (CJA) authorizes three methods for a court to provide counsel to indigent defendants: a Federal Public Defender Organization, a Community Defender Organization, and a panel of private attorneys. Currently there are 59 federal public defender offices serving 67 districts and 16 community defender offices serving 18 districts. The remaining 9 districts are served by panels of private attorneys.

A Federal Public Defender Organization consists of one or more full-time, federal salaried attorneys who are prohibited from having private law practices. The head of a Federal Public Defender Organization, the federal public defender, is appointed by the respective court of appeals to a renewable four year term and is paid a salary fixed by the court of appeals at a rate not greater than that of the United States Attorney (prosecutor) for that district. A Federal Public Defender Organization operates under a budget approved by the Administrative Office of the United States Courts.

A Community Defender Organization (CDO) is a non-profit legal services organization incorporated under state laws and supervised by a board of directors. CDOs may operate under grants approved by the Judicial Conference or they may opt to be reimbursed for their services on a case-by-case basis under the statutorily prescribed hourly rates that also apply to panel attorneys appointed under the Criminal Justice Act. None have opted to be reimbursed on a case-by-case basis.

CJA panel attorneys serve every district in the federal court system. In those districts where there is a Federal Public Defender Organization or a Community Defender Organization, panel attorneys are appointed to handle those cases in which the institutional defender has a conflict of interest -- approximately 25% of all cases. They handle all of the indigent defendant cases in those districts without a Community Defender or Federal Public Defender Organization.

50 STATE AND COUNTY EXPENDITURES FOR INDIGENT DEFENSE SERVICES
FISCAL YEAR 2005

State	Fiscal Year	State Expenditure	County Expenditure	Total Expenditure	Percent State Expenditure
Alabama	2005	\$41,791,344		\$41,791,344	100.0%
Alaska	2005	\$27,183,800		\$27,183,800	100.0%
Arizona	2005	\$820,900	\$103,169,343*	\$103,990,243	0.8%
Arkansas	2005	\$15,032,000	\$1,440,395	\$16,472,395	91.3%
California	2005	\$27,460,000	\$545,417,808	\$572,877,808	4.8%
Colorado	2005	\$47,473,830		\$47,473,830	100.0%
Connecticut	2005	\$35,547,327		\$35,547,327	100.0%
Delaware	2005	\$10,621,400		\$10,621,400	100.0%
District of Columbia	2005			\$59,535,000	0.0%
Florida	2005	\$232,700,000		\$232,700,000	100.0%
Georgia	CY 2005	\$37,227,081	\$57,000,000	\$94,227,081	39.5%
Hawaii	2005	\$10,530,386		\$10,530,386	100.0%
Idaho	2005	\$1,265,800	\$9,921,192*	\$11,186,992	11.3%
Illinois	2005	\$24,342,584	\$100,435,199*	\$124,777,783	19.5%
Indiana	2005	\$17,467,000	\$25,000,000	\$42,467,000	41.1%
Iowa	2005	\$43,194,649		\$43,194,649	100.0%
Kansas	2005	\$18,114,857	\$5,308,134*	\$23,422,991	77.3%
Kentucky	2005	\$29,970,270	\$1,528,140	\$31,498,410	95.1%
Louisiana	CY 2005	\$4,381,640	\$21,561,889	\$25,943,529	16.9%
Maine	2005	\$10,841,372		\$10,841,372	100.0%
Maryland	2005	\$70,330,970		\$70,330,970	100.0%
Massachusetts	2005	\$120,033,457		\$120,033,457	100.0%
Michigan	2005	\$5,634,400	\$73,221,713	\$78,856,113	7.1%

*Figure represents estimate, see notes for explanation.

50 STATE AND COUNTY EXPENDITURES FOR INDIGENT DEFENSE SERVICES
FISCAL YEAR 2005

State	Fiscal Year	State Expenditure	County Expenditure	Total Expenditure	Percent State Expenditure
Minnesota	2005	\$61,110,000	\$4,500,000	\$65,610,000	93.1%
Mississippi	2005	\$1,456,121	\$11,364,919	\$12,821,040	11.4%
Missouri	2005	\$30,156,416		\$30,156,416	100.0%
Montana	2005	\$13,786,495		\$13,786,495	100.0%
Nebraska	2004/ 2005 ¹	\$845,781	\$22,693,906	\$23,539,687	3.6%
Nevada	2005	\$726,178*	\$26,806,108*	\$27,532,286	2.6%
New Hampshire	2005	\$15,718,938		\$15,718,938	100.0%
New Jersey	2005	\$104,552,000		\$104,552,000	100.0%
New Mexico	2005	\$30,798,000		\$30,798,000	100.0%
New York	2005	\$157,636,127	\$244,843,703	\$402,479,830	39.2%
North Carolina	2005	\$85,526,000		\$85,526,000	100.0%
North Dakota	2005	\$2,549,663		\$2,549,663	100.0%
Ohio	2005	\$41,100,978	\$70,357,402	\$111,458,380	36.9%
Oklahoma	2005	\$17,513,364	\$10,926,734*	\$28,440,098	61.6%
Oregon	2005	\$88,123,000		\$88,123,000	100.0%
Pennsylvania	2005		\$100,652,582*	\$100,652,582	0.0%
Rhode Island	2005	\$9,326,000		\$9,326,000	100.0%
South Carolina	2005	\$9,356,488	\$13,283,625	\$22,640,113	41.3%
South Dakota	2005	\$927,726	\$8,073,281	\$9,001,007	10.3%
Tennessee	2005	\$51,038,008	\$4,422,300	\$55,460,308	92.0%
Texas	2005	\$16,370,412	\$128,313,242	\$144,683,654	11.3%
Utah	2005		\$12,896,632*	\$12,896,632	0.0%
Vermont	2005	\$9,019,910		\$9,019,910	100.0%
Virginia	2005	\$90,129,365		\$90,129,365	100.0%

*Figure represents estimate, see notes for explanation.

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50 STATE AND COUNTY EXPENDITURES FOR INDIGENT DEFENSE SERVICES
FISCAL YEAR 2005

State	Fiscal Year	State Expenditure	County Expenditure	Total Expenditure	Percent State Expenditure
Washington	2005	\$4,397,900	\$80,392,300	\$84,727,200	5.2%
West Virginia	2005	\$29,565,099		\$29,565,099	100.0%
Wisconsin	2005	\$68,088,536		\$68,088,536	100.0%
Wyoming	2005	\$5,233,755	\$921,493	\$6,155,248	85.0%
State Total	2005	\$1,777,017,327	\$1,684,389,040	\$3,520,941,367	50.5%
Federal Expenditure: Criminal Justice Act Funding	2005	\$668,800,000			
NATIONAL TOTAL	2005	\$4,189,741,367			

- i. State money for Nebraska is from FY 2005, county money is from FY 2004.

*** Notes on Estimates:**

In a number of states we needed to estimate the indigent defense expenditure. This is due to a lack of reliable data, either at the state or county level. Below are the states in which the indigent defense expenditures were estimated and the methodology used to make these estimates.

Arizona: We were only able to obtain FY 2005 expenditures for Maricopa and Pima Counties, and state-level expenditures. In FY 2002 (the last year for which statewide data was collected), Maricopa and Pima Counties comprised of 77% of the total countywide indigent defense expenditures in the state. Using this 77% expenditure figure we were able to estimate the remaining 23 percent of county expenditures.

Idaho and Illinois: We were able to obtain accurate state expenditure data in Idaho and Illinois; however, there is no state entity that tracks county expenditures in each state. Therefore, using Idaho and Illinois' FY 2002 expenditure data from our last state and county expenditure report,¹ we calculated each state's county expenditure by estimating a 5% increase in expenditures

¹ The Spangenberg Group, *State and County Expenditure for Indigent Defense Services in Fiscal Year 2002* (Sept. 2003), at <http://www.abanct.org/legalservices/downloads/sclaid/indigentdefense/indigentdefexpend2003.pdf>.

50 STATE AND COUNTY EXPENDITURES FOR INDIGENT DEFENSE SERVICES
FISCAL YEAR 2005

annually since 2002.

Kansas: In Kansas we were able to obtain accurate state expenditure data. Therefore, we increased county expenditures by the same percentage that the state expenditures increased from FY 2002² to FY2005.

Nevada: In Nevada, we increased the state's FY 2002 state and county expenditures by 5% annually, using FY 2002 data from our previous report.³

Oklahoma: We were able to obtain reliable state expenditure data in Oklahoma for FY 2005, and we were able to obtain accurate FY 2005 expenditures for Tulsa County, one of two counties that fund indigent defense in Oklahoma. To calculate total county expenditures, we increased the county expenditures by the same percentage the state expenditures increased from FY 2002 to FY 2005.

Pennsylvania: In Pennsylvania, indigent is entirely county-funded, and there is no statewide agency that collects county indigent defense expenditure data. Therefore, we increased our FY 2002 expenditure figure, which had been based on data collected in a 2000 statewide study performed by The Spangenberg Group, by 5% annually to calculate FY 2005 expenditures.

Utah: In Utah, which is entirely county-funded, we were able to obtain reliable county expenditure data for Salt Lake County, which comprises of nearly 40% of the state's total population. Therefore, we calculated total indigent defense expenditures by calculating what the remaining 60% would be.

² *Id.*

³ *Id.*